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PATENT AND TRADEMARK CAUSES

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SENT TO:

Kimberly Terrell, Office of Publications
(703) 746-4658

FEB 17 2003

DATE SENT:

17 Feb 2005

Office of Patent Publication
Director's Office

SUBJECT:

Appln # 09/8608, 929

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No. of pages (including this cover sheet): 8

FEB 17 2005

FROM:

Erin D. Geraghty, Office Manager

Office of Patent Publication
Director's Office

Remarks:

As discussed, attached is a duplicate copy of our
July 24, 2003, Petition. Thank you so much for
your help.

CONFIDENTIALITY NOTE

This confidential facsimile message is intended only for the individual entity named above, and may contain information that is privileged and exempt from disclosure under applicable law. If you, the reader of this message, are not the intended recipient, or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that you should not copy this facsimile or distribute it to anyone other than the intended recipient. In addition, if you have received this facsimile in error, please immediately notify us by telephone or telefax and return the original message to us at the address above via the United States Postal Service. Finally, if it would not inconvenience you, we would appreciate it if you would first fax this message to the intended recipient. Thank you.

If this transmission is not well received, please advise us at our telecopier no. 202-737-3528 or by e-mail at mail@browdynelmark.com, or call our voice telephone no. 202-628-5197.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: ANDERSSON=13

In re Application of:)	Art Unit: 1723
Alf ANDERSSON)	Examiner: C.E. Cooley
Appln. No.: 09/868,729)	Confirmation No. 5197
Filed: June 21, 2001)	Washington, D.C.
For: DEVICE AND METHOD FOR CONTINUOUS MIXING OF AT)	July 24, 2003
Attn: PETITIONS)	

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PETITION TO VACATE HOLDING OF ABANDONMENT UNDER
1.181(a)(1)¹

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 Arlington, Virginia 22202

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Sir:

Applicant is in receipt of the Notice of Abandonment, mailed July 1, 2003, which states that the application is abandoned because of applicant's alleged failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance (mailed February 27, 2003 - "issue fee was received on June 4, 2003".

¹ If a fee must be charged, please charge same to Deposit Account No. 02-4035, and then refund said fee as the holding of abandonment is erroneous and is entirely the fault of the PTO.

In re appln. No. 09/868,729

It is respectfully requested that such Notice of Abandonment be vacated as erroneous and that the present application be reinstated.

THE FACTS

On March 3, 2003, a Notice of Allowance and Issue Fee(s) Due, mailed February 27, 2003, was received. However, attached to said Notice was a Notice of Allowability and Interview Summary Record for an entirely different and unrelated application (09/777,140). The deadline for paying the Issue Fee and filing formal drawings was properly docketed for May 27, 2003, i.e. three months from the mailing date of the Notice of Allowance.

The Docketing Manager of the office of the undersigned immediately contacted the group to report the error, and she was orally informed that an entirely new Notice of Allowance and Issue Fee Due Form with correct attachments would be mailed and the deadline for response re-set.

A new Notice of Allowance and Issue Fee Due Form, mailed March 4, 2003, was received in our office on March 7, 2003. It was noted that this Notice of Allowance contained an error in that it incorrectly indicated that the deadline for payment of the issue fee was May 27, 2003. It is noted that the Notice of Allowance Form indicates that

The issue fee and publication fee (if required) must be paid within three months from

In re appln. No. 09/868,729

the mailing date of this notice or this application shall be regarded as abandoned.

The mailing date on this Notice of Allowance is indicated to be March 4, 2003, meaning that the due date for payment of the issue fee was June 4, 2003.

Based on the above, a communication from applicant was filed in the PTO on March 13, 2003. Said communication indicated that it was understood that the previous papers were now vacated (consistent with the aforementioned telephone conference) and that, the deadline for response was then accordingly to June 4, 2003.

Thus, on June 4, 2003, consistent with both the assurance given over the telephone and the above-quoted portion from the Notice of Allowance, Applicant timely filed the required formal drawings and paid the issue fee. A communication was also filed stating why the deadline was June 4, 2003.

As evidence that such documents were timely and properly filed on June 4, 2003, attached hereto are a xerographic copies of the return postcard date-stamped by the PTO Mail Room as having been timely received by the PTO on June 4, 2003.

In re appln. No. 09/868,729

REMARKS

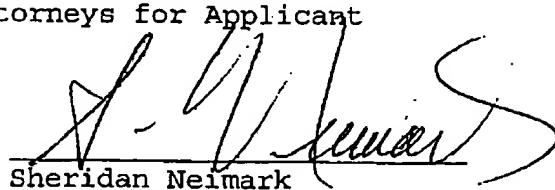
In view of the above evidence, it is clear that the Issue Fee and formal drawings were timely filed on June 4, 2003, based the second Notice of Allowance and Issue Fee Due Form giving three months from the mailing date to pay the issue fee and that the Notice of Abandonment has been issued in error. Indeed, the postcard by itself should be sufficient, as MPEP Section 503 states:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt of the PTO of all items listed there on the date stamped thereon by the PTO.

It accordingly requested that the Notice of Abandonment be vacated and the present application be reinstated.

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

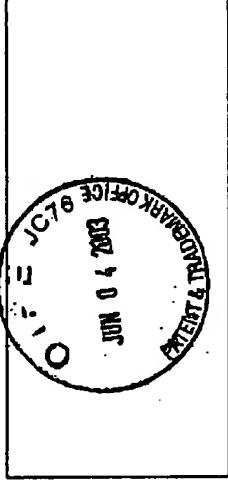
By



Sheridan Neimark
Registration No. 20,520

SN:rbc

Telephone No.: (202) 628-5197
Facsimile No.: (202) 737-3528

APPLICATION/PATENT NO: <u>01/848,729</u>	CONF. NO.: <u>5197</u>
DOCKET NO: <u>ANDERSON 18</u>	CLIENT CODE: <u>ANAL</u>
	
THE PATENT AND TRADEMARK OFFICE STAMP HEREON ACKNOWLEDGES RECEIPT OF THE FOLLOWING PAPERS:	
<input checked="" type="checkbox"/> FEES \$ <u>650.00</u> <input type="checkbox"/> (CH. # <u> </u> MONTHS)	
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<input type="checkbox"/> MISSING PARTS RESPONSE WITH DECL	
<input type="checkbox"/> AMENDMENT/RESPONSE (circle one)	
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<input type="checkbox"/> APPLICATION DATA SHEET	
<input type="checkbox"/> RESTRICTION/SELECTION REPLY	
<input type="checkbox"/> SEQUENCE LISTING <input type="checkbox"/> WITH DISK	
<input type="checkbox"/> RCE / CPA TRANSMITTAL (circle one)	
<input type="checkbox"/> NOTICE OF APPEAL	
<input type="checkbox"/> APPEAL BRIEF (TRIPPLICATE)	
<input type="checkbox"/> REPLY BRIEF (TRIPPLICATE)	
<input checked="" type="checkbox"/> OTHER <u>Small Business</u>	

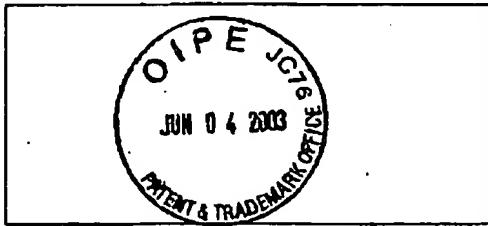
B&N-1

- ASSIGNMENT
- INFORMATION DISCLOSURE STATEMENT
- FORM SBOA & PATENTS/PUBS
- PRIORITY DOCUMENT(S) NO.
- DECLARATION UNDER §
- LETTER TO DRAFTSMAN
- SHEETS OF DRAWINGS
- ISSUE FEE TRANSMITTAL FORM
- MAINTENANCE FEE LETTER

APPLICATION/PATENT NO: 09/868,729 CONF. NO.: 5197
 DOCKET NO: ANDERSSON 13 CLIENT CODE: ANJAP

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- RESTRICTION/ELECTION REPLY
- SEQUENCE LISTING WITH DISK
- RCE / CPA TRANSMITTAL (circle one)
- NOTICE OF APPEAL
- APPEAL BRIEF (TRIPPLICATE)
- REPLY BRIEF (TRIPPLICATE)
- OTHER _____



- ASSIGNMENT
- INFORMATION DISCLOSURE STATEMENT
- FORM SB08A & _____ PATENTS/PUBS
- PRIORITY DOCUMENT(S) NO. _____
- DECLARATION UNDER § _____
- LETTER TO DRAFTSMAN
- 2 SHEETS OF DRAWINGS
- ISSUE FEE TRANSMITTAL FORM
- MAINTENANCE FEE LETTER

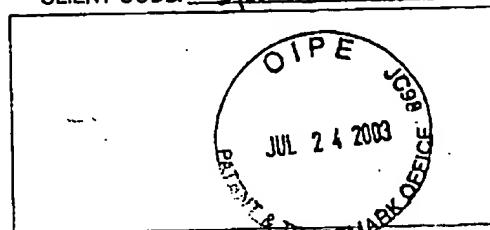
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APPLICATION/PATENT NO: DA 1868,729
 DOCKET NO: ANDERSSON 13

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 PRELIMINARY SUPPLEMENTAL
 APPLICATION DATA SHEET
 RESTRICTION/ELECTION REPLY
 SEQUENCE LISTNG WITH DISK
 RCE / CPA TRANSMITTAL (circle one)
 NOTICE OF APPEAL
 APPEAL BRIEF (TRIPPLICATE)
 REPLY BRIEF (TRIPPLICATE)
 OTHER Return to locate holding of Non + receipt postcard 5K2

CONF. NO.: 5157
 CLIENT CODE: AWAP



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 SHEETS OF DRAWINGS
 ISSUE FEE TRANSMITTAL FORM
 MAINTENANCE FEE LETTER

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WASHINGTON, DC 20001-5303

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MAR 03 2005

Director's Office
Office of Patent Publication

In re Application of :
Alf Andersson :
Application No. 09/868,729 : **DECISION ON PETITION**
Filed: June 21, 2001 :
Attorney's Docket No. ANDERSSON=13 :

This is a decision on the Petition To Vacate Holding Of Abandonment Under 1.181(a)(1), received in the United States Patent and Trademark Office (USPTO) via facsimile transmission on February 17, 2005. Petitioner has submitted a copy of the return postcard, which acknowledges of the same petition on July 24, 2003, as evidenced by the Office Date stamp receipt thereon.

The petition is **DISMISSED**.

The application was abandoned for the applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance. The issue fee was received on June 4, 2003. The due date was May 27, 2003.

Petitioner acknowledges receipt of the Notice of Allowance and Issue Fee(s) Due, mailed February 2, 2003, on March 3, 2003. However, Petitioner notes that the attached Notice of Allowability and Interview Summary Record was for an entirely different and unrelated application (09/777,140). Petitioner states that their Docketing Manager contacted the group to report the error and was informed that an entirely new Notice of Allowance and Issue Fee Due Form with correct attachments would be mailed and the deadline for response re-set.

Petitioner acknowledges receipt of the new Notice of Allowance (Notice), but noted that the Notice contained errors in that the deadline for payment of the issue fee was incorrect. Petitioner further notes that the mailing date of the Notice was March 4, 2003, meaning that the due date was June 4, 2003. Petitioner argues that the Issue Fee and formal drawings were timely filed on June 4, 2003 based on the second Notice of Allowance giving three months to pay the issue fee.

Investigation of the application file reveals that on March 3, 2003 the Office mailed the new Notice of Allowance and Fee(s) Due and the Notice of Allowability. However, it appears that since no errors existed in the first Notice of Allowance, the due date to pay the issue fee was not re-started. Therefore, the due date of May 27, 2003, indicated on the new Notice was correct.

Petitioner appears to be unaware of Office practice with respect to providing a new issue fee due date. However, petitioner is expected to be aware of, and to properly apply, the statutes, rules, practices, and procedures before the Office. As noted in 1056 O.G. 35 (June 12 1995) reproduced below:

ERRORS IN THE NOTICE OF ALLOWANCE

The purpose of the notice is to clarify existing Office practice with respect to providing a new issue fee due date. Sometimes errors appear in the Notice of Allowance, such as an incorrect number of claims, the misspelling of an inventor's name, an incorrect inventorship or an incorrect title. A duplicate Notice Of Allowance correcting the errors may be requested from the Group that mailed the Notice. However, a new issue fee due date will not be provided if the information on the original Notice of Allowance is sufficient to allow a reasonable practitioner to timely file a proper issue fee in the correct application. Specifically, the mere filing of a request for corrected or duplicate Notice of Allowance will not act to stay the period for paying the issue fee.

Since the error was the mailing of the wrong Notice of Allowability and Interview Summary Record by the USPTO and no error existed on the new Notice of Allowance the holding of abandonment will not be withdrawn as this time.

The USPTO apologizes if they were improperly informed that the due date for payment of the issue fee would be re-set.

Petitioner may seek relief by filing a Petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). Forms are available at USPTO website <http://www.uspto.gov>

■ Under 37 CFR 1.137(a), a petition for the revival of an *unavoidably* abandoned application must include the following:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee set forth in § 1.17(l);
- (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (d) of this section.

or

- Under 37 CFR 1.137(b), a petition for the revival of an *unintentionally* abandoned application must be:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (d) of this section.

Further correspondence with respect to the petition for revival under 37 CFR 1.137 should be directed to the Office of Petitions at 703-305-9282 or addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
Office of Petitions
P. O. Box 1450
Alexandria, VA 22313-1450

Telephone inquiries relating to this decision may be directed to the undersigned in the Office of Patent Publications at 703-305-9250 ext. 137.

Thomas E. Parker

Thomas E. Hawkins
Paralegal Specialist
Office of the Director
Office of Patent Publication